IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

OT.Appeal.No. 1 of 2007()

ORDER.C7.7386/06/CT dated 25.9.2006 of COMMISSIONER OF COMMERCIAL TAXES, TRIVANDRUM

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APPELLANT:

M/S.COCHIN SANITARY STORES,
T.D.ROAD, ERNAKULAM,
REPRESENTED BY MANAGING PARTNER,
K.J.SUDHAKARA KAMATH.

BY ADV. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS:
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1. COMMISSIONER, COMMERCIAL TAXES,
PUBLIC OFFICE BUILDINGS, THIRUVANANTHAPURAM.

2. THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY SPL.GOVERNMENT PLEADER (TAXES) MR.V.V.ASOKAN

THIS OTHER TAX APPEAL HAVING COME UP FOR ADMISSION ON 02/03/2007, ALONG WITH WPC NO. 2450 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN, Ag.C.J. &
M.N.KRISHNAN, J.

O.T.A.No.1 of 2007 &
W.P.(C) No.2450 of 2007

Dated, this the 2nd day of March, 2007

JUDGMENT

Radhakrishnan, Ag.C.J.

O.T.A.No.1 of 2007 was preferred challenging the clarificatory order passed by the Commissioner of Commercial Taxes, Thiruvananthapuram under Section 94 of the Kerala Value Added Tax Act, 2003. Appellant had filed an application for clarification requesting to clarify the rate of tax applicable to (1) Gun metal (bronze) valves and cocks – various types, (2) PVC foot valves & PVC ball valve – various types and (3) Cast iron valves and cast iron flanges – various sizes. Assessee contended before the Commissioner that the items (1) and (3)mentioned above are classifiable under entry 20 of 3rd schedule and item (2) is classifiable under entry 99(1)(a) and (2)(a) respectively and would attract tax only at the rate of 4%.

2. The Commissioner examined the contention of the applicant. It was noticed that entry 20 of 3rd schedule relates to

castings of all metals covered under HSN 7325. HSN 7325 relates to other cast articles of Iron or Steel. Entry 99(1) and (2) (a) of 3rd schedule relates to Pipe and pile fittings of all varieties including GI, CI, DP, Hose pipes of PVC covered under HSN 3917. The Commissioner also noticed that the heading 3917 as per CET Act reads as tubes, pipes and fittings thereof (eg. joints, elbows, flanges) of plastics. It was, therefore, noticed that the heading 3917 is limited to the said three articles of plastics only. The Commissioner also examined the clarification sought for in the rate of tax on valves and cocks made of gun metal, cast iron and PVC and he took the view that whenever there is a specific entry for any article, such entry will override all general entries, if any. It was noticed that the articles in question are specifically classified under the heading 8481. Ultimately the Commissioner found that valves and cocks including foot valves and ball valves made of gun metal, cast iron and PVC are classifiable under the heading HSN 8481.80 of Central Excise Tariff Act. The Commissioner, therefore, held that since there is no specific entry of the above items in any of the schedules to KVAT Act,

2003, it would rightly come under residuary entry 103 of SRO 82/06 and taxable at the rate of 12.5%.

3. Learned counsel appearing for the appellant contends that the Commissioner has committed an error in his reasoning with regard to entry 20 of 3rd schedule. Counsel submitted that valves and cocks including foot valves and ball valves made of gun metal, cast iron, etc. would fall under HSN 7419.91 and tax payable at the rate of 4%. Counsel also submitted that PVC foot valves and ball valves would fall under HSN 3917.40 coming under entry No.99(2) of 3rd schedule and that the Commissioner has misread the entry. Learned Government Pleader supported the findings of the Commissioner.

4. We have gone through the entries referred to above. Going by entry No.99(2) with regard to Pipe fittings of plastic, we are of the view that the Commissioner is in error. Pipe fittings made of plastic are definitely includable in entry 99(2) of third schedule with HSN 3917.40 and to that extent the order of the Commissioner is not correct and so far as PVC foot valves and PVC ball valves are concerned, the same would fall under entry

99(1) and (2) of third schedule with HSN 3917.40, tax payable at the rate of 4%. So far as the rest of the items are concerned, there is no error. The Commissioner has rightly found that the above items would fall under HSN 8481.80. This appeal is allowed only to the above limited extent.

5. W.P.(C) No.2450 of 2007 is preferred seeking a declaration that Sl.No.103 of Ext.P5 SRO 82/06 is arbitrary, unconstitutional, inoperative and unenforceable. Going by Sl.No.103 we do not find it as arbitrary, unconstitutional or inoperative. The writ petition, therefore, lacks merit and it is dismissed.

Sd/-
K.S.RADHAKRISHNAN,
Ag.CHIEF JUSTICE.

Sd/-
M.N.KRISHNAN,
JUDGE.

vns

/ true copy /

P.S. to Judge